

Shaw C.J.: This is an application to the Court under section 68 of the Civil Procedure Code to determine the question whether a certain sum of money received by the administratrix of the estate of the deceased from the trustees of the Municipal Provident Fund is subject to the payment of the debts of the deceased.

It is provided by section 19(2) of Ordinance No. 135 (Municipal) as follows:—

"No payments or other allowance on death, superannuation, resignation, retirement or discharge made or granted to persons out of a superannuation and provident fund nor the rights of any contributor acquired thereunder shall be assignable or transferable or liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever."

It has been held in England in the somewhat analogous cases of pensions of officers and civil service officials that the money, when actually received, is liable for the debts of the person receiving it and its property passing to the trustee in the case of a bankruptcy. (See *Jones v. Coventry*, [1909] 2 K.B. 1029; *Re Huggins*, 21 Ch. D. 85).

It was argued however by Mr. Zehnder on behalf of the administratrix that the provision contained in section 19 of the Municipal Ordinance is more extensive than the provisions of the enactments that have been the subject of the English decisions which only prohibit assignment, etc., of the pension or allowance, in that the Ordinance provides that "no payments . . . shall be . . . liable to be attached, sequestered or levied upon in respect of any debt or claim whatsoever" and that the effect of this provision is that although the money has actually been received by the officer or his estate it is nevertheless not liable for the payment of his debts. In effect, the argument must amount to this that the property of the officer during his lifetime and his estate after his death is free from liability for his debts up to the amount received from the Fund.

This is somewhat startling contention and would amount to an infringement of the ordinary rights of creditors. Such a construction ought not to be deduced from the wording of the Ordinance unless the wording is unambiguous to that effect.

In my opinion it is not.

To read the section in the manner suggested it is necessary to read the words "no payments" in the section as meaning "no sums of money received by an officer or by his estate" and even if one so read it, it would be useless for the purpose that it is contended that the section is intended to affect and would indeed be meaningless because a creditor does not, when he takes out execution, levy on any particular sum of money for a debt but levies against the property of the debtor or his estate generally.

This is a somewhat startling contention and would not to be assigned or levied upon under the Ordinance are in my opinion the amounts the officer or his estate is entitled to receive from the trustees of the Provident Fund up to the time the moneys are paid over to the officer or his estate and all that the Ordinance can properly be construed as effecting is the same as the

A English provisions, construed in the cases I have referred to, namely to prevent the money to which the officer or his estate is entitled being assigned by him or attached or levied upon before it comes into his possession.

B I therefore hold that the money received by the administratrix is subject like any other part of the intestate's estate for the payment of his debts.

The costs of all parties to this summons should be paid out of the estate.

Order accordingly.

From this judgment the defendant appealed to the Court of Appeal.

C **Sproule, Barrett-Lennard and Brown JJ.** delivered oral judgments unanimously dismissing the appeal.
Solicitors: *Claude da Silva; Zehnder Bros.*

REX v. TAN AH KOW

[O. Cr. J. (Terrell J.) January 7, 1936]

[Singapore First Assize Case No. 11 of 1936]

Criminal Law — Penal Code, s.366 — Kidnapping in order that a girl may be seduced to illicit intercourse — Meaning of "seduce" and "illicit intercourse."

A girl may be seduced to illicit intercourse within the meaning of section 366 of the Penal Code although [84] she is not thereby surrendering her chastity for the first time. [84]

E Illicit intercourse does not necessarily mean punishable carnal knowledge but includes any intercourse out of lawful wedlock.

TRIAL BY JURY.

Walters for the Crown.

The accused was not legally represented.

F The accused, Tan Ah Kow was tried at the Singapore Assizes on a charge of kidnapping a girl in order that she might be seduced to illicit intercourse. The girl was of the age of 14 years (about) and during the trial it appeared that she had parted with her virginity prior to being kidnapped and a question arose whether section 366 of the Penal Code was applicable in such a case.

G "Seduced" in section 366 is used in opposition to the word "forced" and indicates a method of manner of procuring a person to illicit intercourse. Accordingly "seduced" in this context does not signify or imply the first surrender of chastity.

H It would be contrary to the reason of the section to hold that a man who kidnapped a girl of 15 years 11 months and induced her to surrender her chastity for the first time was punishable under section 366, but that in no circumstances could a man who kidnapped a young girl of 12 and persuaded her to illicit intercourse be so punished merely because on one previous occasion she had surrendered her chastity to someone else.

I The reasoning in the case of *R. v. Moon* [1910] 1 K.B. 818 has no application.

According to the *Shorter Oxford English Dictionary*, Vol. 2 at p. 1829, "seduce" means to induce a woman or girl to surrender her chastity. In Vol. 1 at p. 295 "chaste" is defined not only as pure from un-

lawful sexual intercourse, but also as "continent." It follows, therefore, that a man may have an intention to seduce a girl so as to come within the meaning of the section although at the date of the man's intention, the girl had already had sexual intercourse. Illicit sexual intercourse must mean any sexual intercourse otherwise than in lawful wedlock.

Terrell J. in his charge to the jury upheld these contentions. The relevant passage from his summing up was as follows:—

"It is quite unnecessary that you should be satisfied that these girls were, either of them, virgins at the time that the accused took them away. Section 366 of the Penal Code says that this offence is committed if they were 'seduced to illicit intercourse.' Here 'seduced' is used as a general term, just as you might say that revolutionaries are 'seduced from their proper allegiance.' The word does not necessarily imply anything sexual at all. The sexual part of it is introduced by the words 'illicit intercourse.' The words of the section are 'seduced or forced.' That is, induced to illicit intercourse either by persuasion or by force. And so if the object of the accused was to persuade them to have illicit intercourse, then the section will cover it whether or not they had intercourse with him or anybody else on a former date. The object of the law is to protect small girls under age, if necessary against themselves, and to protect their parents. Because the girl has gone wrong on a previous occasion that does not mean that she has lost the protection of the law for ever afterwards. Therefore, the point for you to decide is whether there was this intention that he should have illicit intercourse."

Accused convicted and sentenced to 12 months' rigorous imprisonment on the 1st charge and 6 months' simple imprisonment on the 2nd charge; sentences to run concurrently.

Re CHOPS LOH KEE SENG AND LOH CHEE SENG

[A.C.J. (Deane J.) April 9, 1926]
[Singapore Bankruptcy No. 28 of 1914]

Bankruptcy — Order for examination of witness — Application to rescind — Jurisdiction — Ordinance No. 44 (Bankruptcy), ss.31(1), 90(1).

An order made under section 31(1) of Ordinance No. 44 (Bankruptcy) for the examination of persons capable of giving information respecting a debtor's dealings or his property may be reviewed, rescinded, or varied upon application made under section 90(1) of the Ordinance.

In re a Debtor; Ex parte Goldstein, [1917] 1 K.B. 558 followed.

Such an order may be rescinded if the proposed examination would be vexatious.

Appeal from an order of Deane J. directing examination of certain persons under section 31 of the Bankruptcy Ordinance.

The material facts and arguments sufficiently appear from the judgment below.

Roland Braddell for the examinees (appellants).
Mundell for the Official Assignee.

Cur. Adv. Vult.

Deane J.: This is an application to the Court to rescind an *ex parte* order made in this bankruptcy on 11th December, 1925, for the examination under section 31(1) of the Ordinance of Loh Kim Swee and Loh Kim Im concerning Loh Chuk Poh, the proprietor of the above-mentioned chops who was adjudicated a bankrupt on 27th February, 1914, his dealings and property and that the said Loh Kim Swee and Loh Kim Im do produce any documents in their custody or power relating to the dealings or property of the said bankrupt. The application is made under section 90(1) of the Ordinance which gives the Court power to review, rescind or vary any order made by it under the bankruptcy jurisdiction, and the case of *In re a [85] Debtor; ex parte Goldstein*, [1917] 1 K.B. p. 558 establishes clearly that the applicants who feel themselves aggrieved thereby have adopted the proper procedure in moving the Court to rescind the order. In that case where the question was raised Shearman J. is reported as saying:

"The other question, namely, whether a person summoned for examination may appeal from the order when he is not a party to it, requires very short treatment. The whole practice of our Courts of Justice is permeated by the principle that if an order affecting any person is made *ex parte*, and he is aggrieved thereby, he does not appeal from the order, but comes before the Court with a summons or motion to set it aside. In the present case section 108 of the Bankruptcy Act, 1914 expressly provides that any order may be reviewed and rescinded or varied. The appellant was aggrieved; he took the proper course in applying to set aside the order by which he was aggrieved."

The application therefore to rescind must be considered on its merits.

Now section 31(1) of the Bankruptcy Ordinance under which the order for examination was made provides that the Court may on the application of the Official Assignee or any creditor summon before it any person whom the Court may deem capable of giving information respecting the bankrupt, his dealings or property; and it is contended by Mr. Mundell on behalf of the Official Assignee that this is a right given to the Official Assignee by Statute which will not be taken away unless the Court is satisfied that the proposed examinee cannot give information about those matters. The case of *In re Eckersley*, 48 L.J. p. 832 cited in support of this proposition does not seem to me to go so far as is suggested. It is true that in that case the Chief Judge in Bankruptcy is reported as saying:

"I am not at liberty to repeal that section of the Statute and when the Statute has plainly said that the trustee has the right to examine persons as therein directed I may not withhold from the Queen's subject that right which the law has given to them."

1 But these words have to be read with reference to the facts of that particular case. It was an appeal from a decision of the County Court Judge refusing an order to examine on the ground that when the professed object was to enable the trustee to go to some other Court the examination should not be held, and all that the Chief Judge meant was that when the Court